

April 11, 2014

Request for EPA Region 10 Regional Administrator to meet with ANCSA Regional Corporations in Alaska

There are a number of Alaska Native Claims Settlement Act (ANCSA) corporations that are concerned with EPA's proposed actions in Bristol Bay. There seems to be a general concern that EPA may be taking position against ANCSA corporation lands which would prevent them from fulfilling their obligations to Alaska Native shareholders.

EPA has received requests for consultation from several ANCSA Regional Corporations and expects to receive requests from all of the ANCSA Regional Corporations. These requests are coming in to the Bristol Bay Team, however the issue is much broader than Bristol Bay and this warrants a conversation between EPA Region 10 Regional Administrator and the ANCSA Corporations. There are a number of EPA activities that have been going on statewide with respect to projects on ANCSA Corporation lands and there is a growing concern that there has been a policy shift that would result in additional hurdles to project development.

Recommendation: The Alaska Operations Office recommends that the Regional Administrator meet proactively with all ANCSA Regional Corporations to inform them of our commitment to work with them in a respectful manner as well as ensure that what is being proposed in Bristol Bay is indeed a unique situation and is not a signal in a policy shift towards ANCSA Corporations. This is an opportunity to build a relationship with the Regional ANCSA Corporations, additional opportunities for Village Corporations should be considered in the future.

Background: The ANCSA Corporations are the largest private landowners in the State of Alaska (see attached background on the various Corporations). The ANCSA Corporations various missions recognize their dual responsibility to both protect and develop, where appropriate, their ANCSA lands. Unlike other American corporations, ANCSA Corporations have economic, social and cultural responsibilities to their shareholders. They selected millions of acres based on their economic development potential, including oil, gas, minerals, and timber. Most have significant projects on their lands or are making plans for them in the future (i.e. Red Dog with NANA, Donlin with Calista, Oil & Gas with CIRI, Doyon, and ASRC to only name a few).

ANCSA Corporations are required to share revenues developed on their lands with other land owning Village and Regional Corporations (see attached background paper for additional information). The uncertainty about the scope of EPA's proposed action in Bristol Bay has left many wondering how large the scope will be for proposed restrictions on development in the region. One comment received from the Doyon Corporation is summarized as follows: "Will this [petitions from tribes] be a new hurdle that our Corporation will need to face when we decide to develop resources on our lands? How will the Agency respond to other petitions from tribes in different parts of the State, we recognize that we have unique resources of value, just as unique as Bristol Bay."

Furthermore, other Federal Agencies have begun to build a relationship with the ANCSA Corporations as well as develop consultation policies. While EPA is committed to providing similar opportunities for the ANCSA Corporations to provide input into our decision making which may impact their interests, EPA has not yet developed a consultation policy. This leaves the ANCSA Corporations with uncertainty about

our Agency's intent to work with them in the future and a lack of awareness on how best to engage our Agency during the decision making process.

Consultation with ANCSA Corporations – Recognition of Unique Relationship with Tribes

While the Federal Government and the ANCSA Corporations recognize the distinct difference between the ANCSA Corporations and Federally-recognized tribal governments, under Public Law 108-199, Federal Agencies are required to consult with ANCSA Corporations on the same basis as Indian Tribes under Executive Order 13175. (The Department of Interior has developed a consultation policy: <http://www.doi.gov/cobell/upload/FINAL-Departmental-tribal-consultation-policy.pdf>)

Excerpt from DOI Policy: *The Department of the Interior (Department) distinguishes the Federal relationship to ANCSA Corporations from the government-to-government relationship between the Federal government and each federally recognized Indian Tribe, and this Policy will not diminish in any way that relationship and the consultation obligations towards federally recognized Indian Tribes. Recognizing the distinction, the Department is committed to fulfilling its ANCSA Corporation consultation obligations by adhering to the framework described in this Policy. When taking departmental action that has a substantial direct affect on ANSCA Corporations, the Department will initiate consultation with ANSCA Corporations.*

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